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IN THE

Supreme Court of the United States

OCTOBER TERM—1963

No. 970

In the Matter of

ANONYMOUS NO. 1, An Attorney,
Petitioner,

against

CO-ORDINATING COMMITTEE ON DISCIPLINE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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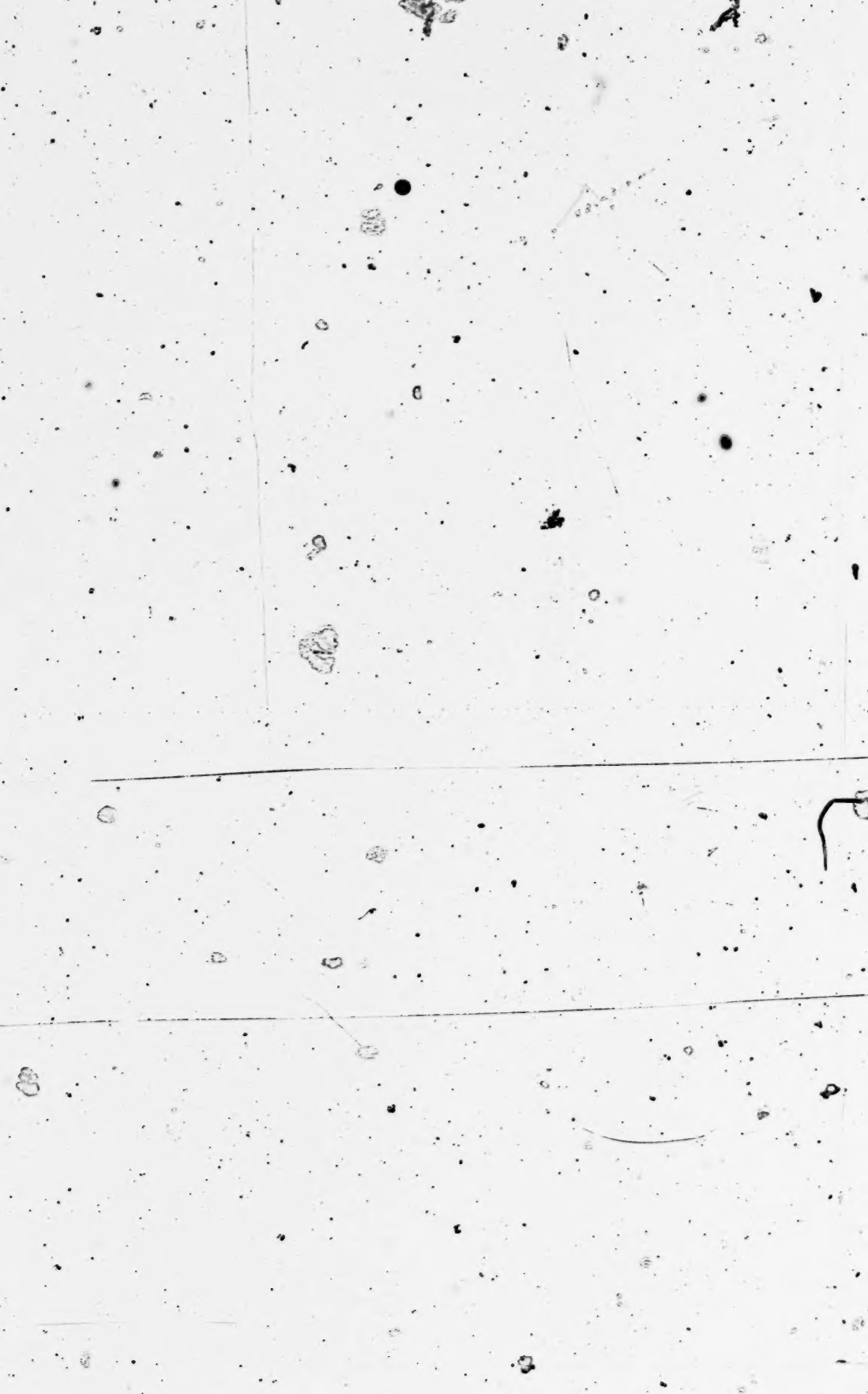

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

The petitioner above-described, respectfully prays that a writ of certiorari issue in the above captioned case directed to the Court of Appeals of the State of New York to review its order dated and entered January 9, 1964. (See certified record submitted herewith.)

Opinions Below

There were no opinions in the courts below.

Jurisdiction

The order of the Court of Appeals sought to be reviewed was dated and entered January 9, 1964. Therefore, the time within which this petition for writ of certiorari might be filed will expire April 9, 1964.

The jurisdiction of this Honorable Court is invoked under Title 28 United States Code, section 1257.

Proceedings Below

Petitioner is the respondent in a disciplinary proceeding brought against him by the Co-ordinating Committee on Discipline.

Pursuant to the provisions of the Civil Practice Law and Rules[1] petitioner moved in the Appellate Division of the Supreme Court, First Department, before whom his proceeding was and still is pending, for an order granting him a discovery and inspection preliminary to trial (23-24).[2] That motion was denied without opinion (21-22). Thereafter, on October 25, 1963, petitioner timely moved for reargument before the Appellate Division, or in the alternative, for leave to appeal to the Court of Appeals. (See certified addendum to the certified record now before this Court.) On November 19, 1963, the Appellate Division denied petitioner's motion without opinion. (See certified addendum to the certified record now before this Court.) Thereafter, petitioner timely moved before the

1. Although the notice of motion was dated August 19, 1963, it was returnable on September 10, 1963. The New York Civil Practice Law and Rules, successor to the Civil Practice Act, went into effect on September 1, 1963 and the procedural remedy sought was governed by the new law.

2. Parenthetic references are to that portion of the certified record entitled Notice of Motion for Leave to Appeal to the Court of Appeals now before this Court, unless otherwise noted.

Court of Appeals for leave to appeal to that court. Said motion was dismissed on January 9, 1964, without opinion. (See certified record now before this Court.)

Questions Presented

1. In the absence of any statute or rule of court sanctioning such a denial, may an attorney, accused in a disciplinary proceeding designed to deprive him of his right to practice law, be denied the usual, ordinary, normal and regular pre-trial procedural remedies in aid of his defense, especially when such remedies are available to all other litigants in New York?

2. The Court of Appeals of New York having ruled that a disciplinary proceeding against an attorney is governed by the statutes and rules of procedure pertaining to civil proceedings, may an attorney be deprived of the benefits of the pre-trial procedures necessary to his defense provided for by such statutes and rules and thereby deprived of the equal protection of the laws and thus prejudiced in his right to make and prepare a defense to the charges against him?

3. Where, without sanction of law or rules of court providing therefor, an attorney, as the respondent in a disciplinary proceeding, is denied the normal and regular statutory pre-trial procedures available to all other litigants in New York, is such a denial of due process which renders the proceeding a nullity until the procedural remedies sought are made available?

Constitutional Provision Involved

The provision of the Constitution of the United States involved herein is the Fourteenth Amendment, the pertinent provision of which is as follows:

"Section 1. . . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes Involved

New York Civil Practice Law and Rules:

"§105. Definitions.

. . . . . .

(b) Action and special proceeding. The word 'action' includes a special proceeding; the words 'plaintiff' and 'defendant' include the petitioner and the respondent, respectively, in a special proceeding; and the words 'summons' and 'complaint' include the notice of petition and the petition, respectively, in a special proceeding."

"§3101. Scope of disclosure

(a) Generally. There shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

(1) a party, or the officer, director, member, agent or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he will not be able to attend the trial; and

(4) any person where the court on motion determines that there are adequate special circumstances."

New York Judiciary Law:

90. Admission to and removal from practice by appellate division.

* * * * * * *

"2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and the appellate division of the supreme court is hereby authorized to revoke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice."

* * * * * * *

6. Before an attorney or counsellor-at-law is suspended or removed as prescribed in this section, a copy of the charges against him must be delivered to him personally, within or without the state or, in case it is established to the satisfaction of the presiding justice of the appellate division of the supreme court to which the charges have been presented, that he cannot with due diligence be served personally, the same may be served upon him by mail, publication or otherwise as the said presiding justice may direct, and he must be allowed an opportunity of being heard in his defense. In all cases where the charges are served in any manner other than personally, and the attorney and counsellor-at-law so served does not appear, an application may be made by such attorney or in his behalf to the presiding justice

of the appellate division of the supreme court to whom the charges were presented at any time within one year after the rendition of the judgment, or final order of suspension or removal, and upon good cause shown and upon such terms as may be deemed just by such presiding justice, such attorney and counsellor-at-law must be allowed to defend himself against such charges. * * *"

Statement

The Nature of Respondent

The respondent Co-ordinating Committee on Discipline, is made up of the respective chairmen of the regular grievance committees of the Association of the Bar of the City of New York, the New York County Lawyers Association and the Bronx County Bar Association. By an order dated February 3, 1959, the Appellate Division, First Department, of the Supreme Court of the State of New York, directed the then newly formed committee to conduct a continuing study into the practice of negligence law in the First Department. Actually the Committee was formed only for that purpose and limits its activities to New York and Bronx counties. Unlike the grievance committees of the named bar associations, the Co-ordinating Committee is quasi-official in nature. Although the Committee members serve voluntarily, its staff is paid with public funds and is composed in part of court personnel assigned by the Appellate Division to the investigative and administrative work of the Committee. The investigative work of the Committee is aided by broad subpoena powers.

The Committee conducts its inquiry *in camera* and *ex parte*. A lawyer being investigated by the Committee is not permitted to attend or cross-examine witnesses who

appear before the Committee. As occurred in the case at bar, a lawyer may appear before the Committee if it invites him to do so, but he may not produce witnesses in his own behalf. He is limited to answering such questions as may be propounded to him before the Committee and he is not advised what, if any, charges are being considered against him. The Committee takes the position that there can be no "charges" against an attorney during its investigation and so there are no charges of which he can be advised. A lawyer appearing before the Committee "learns" of "charges" against him by the nature of the questions addressed to him.

When the Committee decides so to do, it reports on its investigation against an attorney by petitioning the Appellate Division *ex parte* to the effect that a *prima facie* case against such attorney exists and also requests that its legal staff be appointed as prosecutor of a disciplinary proceeding to be brought against such attorney (Judiciary Law, section 90).

A petition is then served on the attorney which advises him of the charges against him and which he may answer as he is advised. Thereafter a referee is appointed to hear and report to the Appellate Division with regard to the evidence adduced concerning such charges. Before hearings are held, the Committee will on demand supply a bill of particulars in amplification of the charges, but will not disclose any of its evidence in support of its charges in any bill it supplies.

With Regard to the Case at Bar

Petitioner is a distinguished member of the New York bar who has been practising for more than thirty years. Until this disciplinary proceeding was instituted against him, his record was unblemished. At the time the pro-

ceeding was begun, he was a director of one, and a member of a number of bar associations.

The present charges against petitioner stem from an appearance or appearances by two former lawyers—Irving Dansker and Bert J. Sapot—before the Coordinating Committee on Discipline.[3] Prior to their appearance before the Coordinating Committee, Dansker and Sapot had been indicted in New York County for various acts of fraud involving cases where they were the attorneys of record (the indictment set forth some twenty counts).

Dansker and Sapot (they were partners in a law firm) were allowed to plead to one count of the indictment to cover all counts and each received a suspended sentence on their promise to the sentencing court that they would furnish evidence to the Committee against "someone" not named in the indictment. It is surmised from the petition served on petitioner that the nature of their "cooperation" was to appear at *ex parte* sessions of the Committee and accuse the petitioner of responsibility for all their misconduct and to accuse him of every imaginable act of misconduct, larceny, chicanery and perfidy. (It may be surmised from the petition served on petitioner, although it is not known, that when they appeared before the Committee, Dansker and Sapot claimed that they were acting as the pawns of petitioner.)

Petitioner was never permitted to know of or attend such *ex parte* sessions.

It is significant to note that although the indictment against Dansker and Sapot named numerous co-conspira-

3. The Co-ordinating Committee to this day has not shown the petitioner the transcript of any statements or testimony by Dansker and Sapot or disclosed to petitioner the substance thereof. As a matter of fact, the Committee has refused to disclose to petitioner any of the statements, testimony or documents upon which it acted against him.

tors who allegedly acted in concert with them, the petitioner's name was not even mentioned in the indictment and no indictment ever issued against him.

As was later gleaned from the petition against petitioner (the apparent source therefor being what Dansker and Sapot must have told the Committee), it would appear that Dansker and Sapot claimed to have paid petitioner large sums *in cash*, which cash was made available from the proceeds of certain cases in which petitioner had appeared as counsel for them. The money was supposed to have been reimbursement to petitioner for monies allegedly advanced by petitioner on their behalf to finance certain illicit transactions in obtaining and disposing of the cases in which Dansker and Sapot had retained the respondent as counsel. The payments were ostensibly made over a period of about one year.

Before being charged, the petitioner was called before the Co-ordinating Committee. He was asked a series of questions which by their very nature indicated the thrust of the Dansker and Sapot accusations. He was never shown or told, however, what Dansker and Sapot had actually said.[4]

When the petitioner asked that he be confronted by Dansker and Sapot, the Committee refused such confrontation, as a matter of "policy" (36-42).

When petitioner sought to produce witnesses in his own behalf to show the facts and nature of his relationship to Dansker and Sapot, the Committee refused to hear such witnesses (25-31, affidavit before Appellate

4. Whether only Dansker of Sapot or both of them actually had appeared before the Committee was never disclosed by the Committee. Whether, if both appeared, their stories were mutually corroborative, was never disclosed.

Division with exhibits annexed thereto).[5] It is not disputed that the Co-ordinating Committee acted against petitioner without disclosing its evidence against him or hearing the witnesses he wanted to produce in his own behalf.

Bearing in mind the extraordinary cash transactions which the Committee charged as having occurred between Dansker and Sapot and petitioner, petitioner moved in the Appellate Division[6] for a discovery and inspection of the Dansker and Sapot financial records for the year involved. This motion was made pursuant to Section 3101(4) of the Civil Practice Law and Rules of New York, which section provides for such a discovery and inspection. Petitioner also simultaneously moved for an examination of the evidence against him in the possession of the Co-ordinating Committee. Petitioner's application to the Appellate Division spelled out the materiality of the discovery sought (23-31).

In substance, petitioner demonstrated that such a discovery would disclose not only whether such cash transactions did occur, but even whether such transactions could have occurred.

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5. At the hearing before the Committee on December 18, 1962, Mr. Weiner, counsel to the Committee, stated as follows:

> "This is a non-adversary proceeding, and if you propose to submit witnesses, I will object to it strenuously. The Committee has never done that before and I don't think it should start now" (41).

When petitioner's counsel pressed his application to be permitted to produce witnesses in behalf of petitioner, Mr. Burns, chairman of the Committee, stated, at the hearing of February 7, 1963, that the Committee would consider petitioner's application and, "give you a final decision on that point at a future date" (43). Before giving petitioner an answer to his application, the Committee filed its charges against petitioner (28).

6. Disciplinary charges against an attorney are brought in the Appellate Division of the Supreme Court of the State of New York pursuant to Section 90 of the Judiciary Law of New York.

The Co-ordinating Committee did not oppose petitioner's application on the merits of the discovery sought (38-43). The Committee did not dispute the materiality or relevancy of the discovery proposed. The Committee did not deny the existence of such financial records or that they would disclose what petitioner said they would. The Committee's entire opposition was simply that petitioner should not have such a discovery as a matter of "policy".

The Appellate Division denied petitioner's application without opinion; denied petitioner's application for reargument (and the constitutional issues were clearly spelled out in the application) and also denied petitioner's application for leave to appeal to the Court of Appeals; and the Court of Appeals dismissed petitioner's motion for leave to appeal.

Reasons for Allowance of the Writ

1.

Although the refusal of the Court of Appeals to act was based on grounds of non-finality, the jurisdiction of this Court is properly invoked on the authority of *NAACP* v. *Alabama*, 357 U. S. 449, 457-458, 78 S. Ct. 1163, 1169, 2 L. Ed. 2d 1488, and *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 68, 68 S. Ct. 972, 976, 92 L. Ed. 1212.

Unless review is available now, petitioner will be irremediably injured for he will be frustrated in his efforts to prepare a proper defense to the charges against him.

2.

The case at bar falls within the ambit of those "*secrecy*" cases which have given rise to a number of the recent "due process" decisions of this Court.

At issue is the denial to the petitioner of the ordinary and usual discovery procedures available to all other litigants in the State of New York.

At issue is the propriety of a prosecuting Committee's withholding of evidence necessary and material to the petitioner's defense to the charges brought against him.[7]

a.

Under the Laws of New York Petitioner Is Entitled to the Discovery of the Dansker and Sapot Financial Records

New York's Civil Practice Law and Rules (hereinafter referred to as C.P.L.R.) section 3101, provides as follows:

> "There shall be a full disclosure of all evidence material and necessary in the prosecution of an action, regardless of the burden of proof, by:
>
> . . . . . .
>
> (4) any person where the court on motion determines that there are adequate special circumstances."[8]

7. With over 15,000 practising lawyers in the First Department alone, the problem is a serious one. Inquiries of similar nature are expanding in New York. Similar inquiries now exist in the Second Department. There are no published or announced rules in New York to guide pre-hearing or hearing procedures in attorneys disciplinary proceedings. Pre-hearing procedures vary from department to department within the State. The respective departments do not publish their decisions on procedural motions in disciplinary proceedings and no one knows what procedural standards will be followed in any given disciplinary proceeding instituted as a result of such inquiries. Thus, in *Matter of Friedman*, 17 A.D. 2d 644, a case in the Second Department, the published report does not reveal that prior to the beginning of hearings before the referee a discovery of the type sought here was granted. The decision granting such discovery has never been published. It is actually impossible to determine what other Departments in New York have established as the rules of procedure, assuming rules of procedure have been adopted in such Departments.

8. The same language "special circumstances" appeared in the New York Civil Practice Act, section 288, the predecessor to the

The word "action" in C.P.L.R. 3101, is defined in C.P.L.R. 105, as follows:

> "The word 'action' includes a special proceeding; the words 'plaintiff' and 'defendant' include the petitioner and respondent, respectively, in a special proceeding; and the words 'summons' and 'complaint' include the notice of petition and the petition, respectively, in a special proceeding."

In *Matter of Mathot*, 222 N. Y. S. the Court of Appeals unanimously held that a disciplinary proceeding against an attorney is a special proceeding, stating, at page 9, as follows:

> "The proceedings in the Appellate Division, relating to attorneys and counsellors at law, have long been treated by the courts as special proceedings within the provisions of the Code of Civil Procedure. (Sections 3333, 3334; 3433, subd. 20; *Matter of Cooper*, 22 N. Y. 67; *Matter of Percy*, 36 N. Y. 651; *Matter of Attorney*, 83 N. Y. 174; *Matter of Droege*, 197 N. Y. 44; *Matter of Robinson*, 209 N. Y. 354.)"[9]

See also,

Matter of Spencer, 137 App. Div. 330.

Mathot, has never been reversed or modified. Inasmuch as the C.P.L.R. provides for a discovery in a special proceeding such as a disciplinary proceeding is, petitioner has been deprived of the benefit of the C.P.L.R. in aid of his defense.

This Court, in *Willner v. Committee of Character and Fitness*, 373 U. S. 96, 83 S. Ct. 1175, held that even an

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C.P.L.R. It has long been held that special circumstances exist where it is shown that the evidence sought to be elicited is in the possession of a witness not a party to an action or special proceeding. *Matter of Moritz*, 10 Misc. 2d 101, aff'd 5 A.D. 2d 830. In the case at bar it is not disputed that the financial records sought are in the possession of the two principal accusers of the petitioner—Danisker and Sapot who are not parties to this proceeding.

9. The Code of Civil Procedure was the predecessor practice act in New York to the Civil Practice Act.

applicant for admission to the Bar of the State of New York was entitled to procedural due process which, in that case, referred to the right to confrontation and cross-examination. It follows that if due process is the right of an applicant to the Bar, then due process is certainly the right of one who, having been admitted, is threatened with expulsion.

In the *Willner* case, the dissenting opinion did not take issue with the holding by the majority, at page 105, that the petitioner, "had no opportunity to ascertain and contest the bases" of the Character Committee's reports, and of the concurring opinion, at page 108, that the petitioner was entitled to be informed "of the factual basis of the conclusion and * * * afforded an adequate opportunity to reply or explain."

In the case at bar we deal with the fact that, in New York, although statutorily available discovery procedures provide every other type of respondent with an adequate opportunity to defend against a petition, such discovery procedures were denied to the petitioner.

This Court in *Cohen* v. *Hurley*, 366 U. S. 117, 81 S. Ct. 954, ruled that an attorney, because of his special position, may be disciplined for asserting his privilege against self-incrimination. Nothing in that opinion, however, even suggested that when he pleads his innocence to a charge against him he should also be deprived of the normal and ordinary procedural remedies available to all other defendants and respondents. Such a disability is not a reasonable or fair incident of the privilege of serving as an attorney. As the majority of this Court stated in *Cohen*, at page 129:

> "The issue is not, of course, *whether* lawyers are entitled to due process of law in matters of this kind, but, rather *what* process is constitutionally

> due them in such circumstances. We do not hold that lawyers, because of their special status in society, can *therefore* be deprived of constitutional rights assured to others, but only, as in all cases of this kind, that what procedures are fair, what state process is constitutionally due, what distinctions are consistent with the right to equal protection, all depend upon the particular situation presented, and that history is surely relevant to these inquiries."

Traditionally, in New York, bar associations have been the prosecutors of disciplinary proceedings. If the procedures of the Association of the Bar of the City of New York can serve as an historic guide, then full and complete disclosure has been the historic rule. Confrontation of witnesses during the course of preliminary investigation, examinations of evidence by the respondent, disclosure of contentions and the evidentiary reasons therefor, have always taken place and still take place long before a disciplinary proceeding is commenced. Thus, historically, attorneys prosecuted by the Association of the Bar have been accorded every opportunity to learn of the evidence against them and to prepare their defense.

Now come the respondents herein, first organized in 1959, and contend that all this must now change, and not only shall confrontation and disclosure be denied to an attorney during the investigative stage of its activities,[10] but that even after charges are preferred against him the pre-trial discovery procedures provided by law to a respondent should also be denied him. As against full disclosure which is the tradition in disciplinary proceedings against attorneys in New York, the respondent here now invokes a rule of complete secrecy.

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10. Petitioner is not concerned here with this phase of the respondent's position.

It is respectfully submitted that the denial of due process and of an equal application and protection of the laws to the petitioner here is self-evident and merits consideration by this Court at this stage of the proceedings.

b.

On the Full Disclosure Phase of this Petition

Petitioner also seeks a full disclosure by respondent of all evidence adduced against him in the course of respondents' *in camera* inquiry. Respondents have refused to accede to this demand although respondents have never denied that they are in possession of evidence favorable to petitioner's defense.

In justifying this denial, respondents rely on the rule in *People* v. *Rosario*, 9 N. Y. 2d 286, a criminal case, not a disciplinary proceeding. Thus, as respondents stated in their brief to the Court of Appeals.[11]

> "Upon the trial of this matter, which is yet to take place before the Referee appointed by the Court below, whenever a witness for petitioners (respondents here) in the disciplinary proceeding completes his testimony upon direct examination, a copy of the transcript of his testimony in the preliminary inquiry will then be delivered to respondent below upon request, so that it may be used to point up any inconsistencies which may exist in the testimony given by the witness, or for any other legitimate purpose."

Obviously respondents' position is that they will not produce any statements or evidence made by or received from witnesses whom they decide not to call at the hearings.

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11. See page 6 of respondents' brief to the Court of Appeals.

Petitioner here submits that he is entitled to *all* the evidence he seeks *before* the hearings so that he may *prepare a proper and full defense.*

If the rule in criminal cases is to be applied to this disciplinary proceeding against an attorney, then in *Brady v. State of Maryland*, 373 U. S. 83, 83 S. Ct. 1194, the Court stated, at page 87:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."

In *Brady* the demand for disclosure was made *before* the trial.

In *United States ex rel Meers v. Wilkins*, 326 F. 2d 35, (C.C.A. 2, January 6, 1964)[12] it was held that the obligation to disclose exists even if no demand for disclosure is made. The Court stated, at page 37:

> "The case before us differs from Brady in that the defense counsel here never requested the disclosure of evidence from the prosecution, but we think that such request is not a sine qua non to establish a duty on the prosecution's part. It is important that the Supreme Court's opinion in Brady agreed with the Maryland Court that the decisions in U. S. ex rel. Almeida *v.* Baldi (195 F. 2d 815 [3 Cir. 1952] cert. denied, 345 U. S. 904 (1952), and U. S. ex rel Thompson *v.* Dye (221 F. 2d 763 [3 Cir.]) certificate denied sub nomine Pennsylvania *v.* United States ex rel Thompson (350 U. S. 875 [1955]), state the correct constitutional rule regarding the obligation of a prosecutor to disclose exculpatory evidence."

12. Relator successfully sought release from a New York State penitentiary 20 years after conviction on the ground that the prosecution suppressed evidence which may have been favorable to him.

The only way in which petitioner will ever learn if there is evidence favorable to him will be if he is allowed to examine the statements and testimony in respondents' possession and also allowed to examine the documentary evidence in respondents' possession. Anything less must of necessity constitute a denial of due process, for certainly petitioner is entitled to the same disclosure as that afforded in aid of the defense of the lowliest criminal. As the Court stated in *Brady*, at page 87:

> "A presentation that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecution in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, this action is not 'the result of guile' to use the words of the Court of Appeals. 226 Md., at 427, 174 A. 2d at 169."

The disclosure here sought is not directed at respondents' work product, but is limited to the testimony and statements of witnesses and to documentary evidence in the possession of respondents. It is only by way of such a disclosure that petitioner can prepare a full and complete defense. In essence, respondents have a simple burden of fairness. If they wish to prosecute, let them disclose. If they do not wish to disclose, then let them not prosecute.

United States v. *Andolshek*, (C.C.A.2) 142 F. 2d 503, 506.

The extent to which disclosure will be ordered by this Court is further illustrated by *Smith* v. *Pennsylvania*, U. S. , 84 S. Ct. 763 (March 9, 1964).

It is respectfully submitted that the issue of disclosure in this important area of the law merits the attention of the Court for we deal here with the ability of a lawyer to defend himself against one of the most serious accusations that can confront any man.

CONCLUSION.

It is respectfully submitted that the issue of due process and of equal protection of the laws in the case at bar is compelling and of such importance to the administration of justice as to warrant this Court's review.

Respectfully submitted,

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Appendix

Order of Court of Appeals of the State of New York Denying Motion for Leave to Appeal

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of January A. D. 1964.

Present—Hon. CHARLES S. DESMOND, *Chief Judge, presiding.*

Mo. No. 23

In the Matter of

ANONYMOUS No. 1, An Attorney,
Appellant,

CO-ORDINATING COMMITTEE ON DISCIPLINE,
Respondent.

A motion for leave to appeal to the Court of Appeals having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

A copy

GEARON KIMBALL
Deputy Clerk.

[SEAL]